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10/695,817	10/30/2003	Shinobu Tanaka	Q77969	7177

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EXAMINER

AMAYA, CARLOS DAVID

ART UNIT	PAPER NUMBER
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2836

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/695,817	Applicant(s) TANAKA, SHINOBU	
	Examiner Carlos Amaya	Art Unit 2836	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Notice of Appeal filed on 01/05/2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the Appeal Brief filed on 01/05/2007, PROSECUTION IS HEREBY REOPENED. New Ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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3. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. "A qualified person marker held by a driver having a driving qualification appropriate for driving the vehicle **only** when the qualified person marker is held opposite the marker detector"; see amendments filed on 03/13/2006 and 7/13/2006. The specification does not described that the marker detector detects the marker held by the driver **only** when it is opposite to the detector.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6,8-13,15 are rejected under 35 U.S.C. 102(b) as being anticipated by Kito (JP 08237734).

With respect to claim 1 Kito discloses an apparatus for preventing an unqualified person from driving a vehicle (car antitheft device), comprising: a marker detector provided in the vehicle (receiver 12 provided in the vehicle as shown in the figures) to detect a qualified person marker (transponder 11) held by a driver having a driving qualification appropriate for driving the vehicle (only authorized personnel hold the transponder 11 to

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operate a cash transport truck, for example paragraph 0001) only when the driver holds the qualified person marker opposite the marker detector (as shown in the figures 1 and 3 the marker detector, receiver 12, detects the marker, transponder 11 ONLY when the marker is hold opposite the marker detector. Shoe and gas pedal are connected by magnetic coupling, paragraph 0021); and a control unit (ECU 16) for continuously monitoring an output from the marker detector and taking a predetermined measure to ensure safety when a state occurs in which the qualified person marker is not detected (paragraph 0010-0012, continuously monitoring of the transponder 11 is carry out by ECU 16, since once the two are separated power is no longer provided to transponder 11, horn 21 and head lights 22 are operated and engine halt is carry out when the two are separated, paragraph 0028-0033).

With respect to claim 2,9 Kito discloses the apparatus as claimed in one of the claims, wherein the measure is a warning for appealing to the sense of sight or the sense of hearing of the driver (horn 21 and headlight 22 are operated when ECU 16 does not detect transponder 11, paragraph 0033-0034).

With respect to claim 3,10 Kito discloses the apparatus as claimed in one of the claims, wherein the measure is stopping the driving of the vehicle (halt of the vehicle is performed when ECU 16 does not detect transponder 11, paragraph 0033-0034).

With respect to claim 4,11 Kito discloses the apparatus as claimed in one of the claims, wherein the measure comprises a warning for appealing to the sense of sight or the sense of hearing of the driver and the stopping of the driving of the vehicle is performed after the warning (horn 21 and headlight 22 are operated when ECU 16 does

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not detect transponder 11 position in a shoe of a driver and halt of the vehicle is performed after certain time, paragraph 0033-0034).

With respect to claim 5 Kito discloses the apparatus as claimed in claim 1, wherein the measure is released when the marker detector again detects the qualified person marker. One of ordinary would have envisioned providing access to the vehicle when the authorized person holding the transponder 11 gets in the car after it has stopped.

With respect to claim 6 Kito the apparatus as claimed in claim 1, wherein the control unit takes the measure when a state occurs in which the qualified person marker is not detected for a predetermined time period (paragraph 00032).

With respect to claim 8 Kito discloses an apparatus for preventing an unqualified person from driving a vehicle (car antitheft device), comprising: a marker detector (receiver 12) provided in a floor of a cab of the vehicle (paragraph 0044 discloses that the receiver 12 can be provided in a surface of a floor) to detect a qualified person marker provided in a shoe worn (transponder 11 is positioned in a shoe see fig. 3) by a driver having a driving qualification appropriate for driving the vehicle (authorized personnel to drive the vehicle); and a control unit (ECU 16) for monitoring an output from the marker detector and taking a predetermined measure to ensure safety when a state occurs in which the qualified person marker is not detected (paragraph 0010-0012, continuously monitoring of the transponder 11 is carry out by ECU 16, since once the two are separated power is no longer provided to transponder 11, horn 21 and head

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lights 22 are operated and engine halt is carry out when the two are separated, paragraph 0028-0033).

With respect to claim 12 Kito discloses the apparatus as claimed in claim 8, wherein the marker detector detects the qualified person when the qualified person marker provided in a shoe is disposed opposite the marker detector provided in the floor of the cab. The marker detector (receiver 12) detects the marker (transponder 11) ONLY when the marker is hold opposite the marker detector by magnetic coupling paragraph 0021. Paragraph 0045 discloses providing transponder 11 is placed in a shoe and receiver in a surface floor of a vehicle).

With respect to claim 13 Kito discloses a qualified person marker (transponder 11) for use with a vehicle equipped with a marker detector (receiver 12) for preventing an unqualified driver from driving the vehicle (only authorized personnel drive the cash transport truck), the marker comprising: a receiving antenna (antenna coil 17 fig. 1); a power source unit connected to the receiving antenna and configured to generate an electrical power signal in response to an electromagnetic signal coupling into the receiving antenna (antenna 17 severs as the coil fro power transmission, paragraph 0019 and 0021); a modulation unit (amplifier 18) powered by the electrical power signal and configured to modulate a signal identifying the qualified person marker (paragraph 0019 amplifier 18 makes a digital signal of the receive code) and indicating that a driver of the vehicle is qualified to drive the vehicle (amplifier 18 transmits the code to ECU 16, which makes the comparison of the received code an the pre-stored code); and a sending antenna connected to the modulation unit and configured to transmit the

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modulated signal (magnetic-flux generating circuit 19, paragraph 0020), wherein the qualified marker is disposed in a shoe of a driver qualified to drive the vehicle (see figure 3).

With respect to claim 15 Kito discloses the qualified person marker claimed in claim 13, wherein the receiving antenna receives the electromagnetic signal from a marker detector located in the vehicle only when the qualified person marker is placed opposite the marker detector (as shown in the figures 1 and 3 the marker detector (receiver 12) detects the marker (transponder 11) ONLY when the marker is hold opposite the marker detector. Shoe and gas pedal are connected by magnetic coupling, paragraph 0021).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kito (JP 08237734) in view of Thorpe (UK GB 2,395,331 A).

With respect to claim 7 Kito discloses the apparatus of claim 1, however, does not disclose expressly a driver detector for detecting the presence or absence of a driver riding on the vehicle.

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Thorpe discloses a driver detector (seat pressure pad 120, Page 10 lines 24-26) for detecting the presence or absence of a driver riding on the vehicle (Page 10 lines 27-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the driver detector disclosed by Thorpe in Kito's invention.

The suggestion or motivation for doing so would have been to detect the presence of an unauthorized operator sitting in the driver's seat as disclosed by Thorpe, Page 11 lines 1-6.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Amaya whose telephone number is (571) 272-8941. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus can be reached on (571) 272-2800. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CA



4/30/07

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